



GRAND RONDE GAMING COMMISSION

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August 18, 2006

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Subject – Comments to the proposed Class II Technical Standards

We appreciate an opportunity to again provide the National Indian Gaming Commission (NIGC) comments on their proposed Class II Technical Standards. As outlined in our comment letters of November 23, 2004, and May 25, 2005, we believe that the Indian Gaming Regulatory Act (IGRA) is clear in that “Tribes”, have the responsibility of determining the classification of games. This position was affirmed by this Tribe on July 24, 2006, during the consultation with the National Indian Gaming Commission in Tacoma, Washington.

Tribal gaming commissions have traditionally been responsible and accountable for ensuring that games, devices, and technological aids qualify as Class II. With the changes in technology, this distinction and determination is not an easy task, however, it is a right we expect NIGC to recognize, support and respect our position to retain. One aspect of a Tribe’s ability to enhance their economic development is the right to determine classification of Class II games without interference and/or oversight by the State.

We acknowledge the difficult task that NIGC has before them. We agree that new advances in gaming makes the interpretation and understanding of “technological aids” verses “electromechanical facsimiles” more difficult. However, there are clearly articulated differences which can be applied if the local tribal gaming authority takes the necessary time and extensive work to do so. We cannot support NIGC assuming our role and dilute this Tribe’s regulatory authority of having the exclusive right to regulate its gaming activities as granted by IGRA.

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Because of the technical advances in Class II gaming, it appears that NIGC is seeking to expand regulation of Class II rather than keeping with the current practice of assisting tribes in the proper classification of gaming devices through advisory bulletins and opinion letters.

We object to NIGC making the final determination of whether a specific game or device is Class II or Class III. Tribal Regulatory Agencies should retain this right with the ability to rely upon advisory and notification opinions. By NIGC proposing to classify/define Class II games, it implies that all other games not specifically defined by NIGC are Class III. By mere elimination, this places a Tribe in a non-negotiable position with a State. Currently the Tribe has the authority to make classification determinations of games which requires the State to prove otherwise.

The proposed criteria/standards for classification of a Class II game are good suggestions which are very similar to those this Tribe has adopted and used in the past to ensure proper classification of games. This Tribe has gone so far as to seek the aid of an independent laboratory to assist us in making a final determination. This Tribe has been stewards of the authority granted by IGRA and have not exceeded the criteria established to define technological aids as we have been advised some tribes have.

This brings us to our next significant concern with NIGC regulating and certifying independent testing laboratories. We assume the only purpose for this action is to ensure only NIGC approved and certified laboratories conducts testing on Class II games. This Commission has not taken the position of licensing an independent testing laboratory, even though we have the authority to do so, because of the negative perception it would generate. If we license an independent laboratory it could be assumed we have a vested interest, therefore, could control the testing and outcome. If a gaming authority licenses an independent laboratory they must assume the responsibility of having to administer corrective or disciplinary action which could be viewed as retaliatory because the results were not favorable to the licensing authority i.e. NIGC.

We suggest that NIGC and the gaming tribes rely upon an independent testing laboratory's creditability, experience, expertise, and past record to determine their ability to test gaming devices. If testing laboratories were regulated or license by another Board similar to physicians, plumbers, etc. it would be more acceptable to this Tribe rather than NIGC certifying the capabilities of laboratories.

It is and should remain, the responsibility of the primary regulator to ensure testing of gaming devices meets their minimum standards in which they have incorporated the minimum standards of NIGC. NIGC requiring an independent approved testing laboratory to determine if a technical aid meets the definition of Class II further dilutes this Tribe's right to determine game classification.

This Tribe conducts Class III gaming in conjunction with the State through a Compact. The Compact authorizes the State, through the Oregon State Police, to approve all

independent testing laboratories for purposes of meeting Tribe/State Class III standards. The Oregon State Police does not license independent gaming laboratories nor do they have the authority to do so. Is NIGC now going to assume the same role or will the acceptance of the current and any future testing laboratories approved by the Tribe and State of Oregon be acceptable to NIGC?

NIGC believes, as described in the federal register comments, the lines between Class II and Class III gaming devices have become so unclear that tribes are unable, unwilling, or intentionally failing to properly distinguish between an "aid" and a "facsimile." That some gaming tribes have crossed the line by classifying "facsimiles" as "aids", and NIGC believes it necessary to stop that practice. This Tribe will again be impacted by NIGC's failure to take corrective action against a small number of tribes by enacting rules that impact all tribes rather than holding those tribes who fail to operate within acceptable parameters accountable.

As proposed on July 24, 2006, in Tacoma, Washington, we respectfully request that NIGC consider granting an exception to Tribes that possess a Certificate of Self Regulation. If a full exemption from these proposed standards is not agreeable, we propose permitting a Tribe that possesses a Certificate of Self Regulation to have the final authority to determine a game classification without the veto authority proposed for NIGC.

Sincerely,



Denise Harvey
Chair

Cc: Commission
L. Estensen